



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/01521/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd September 2013**

Determination Sent

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR M M
(ANONYMITY ORDER MADE)**

Claimant

and

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Ms Watterson (Instructed by AB Mackenzie, Solicitors)
For the Respondent: Mr T Wilding (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Oliver) dated 17th June 2013 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him asylum and return him to Uganda.
2. The Appellant had come to the UK as a student in September 2008. His student visa was extended to January 2013 but revoked in August 2011.

He claimed asylum in January 2013 on the basis that he is gay and that he had been persecuted in Uganda in the past.

3. Despite a hearing that, according to the Record of Proceedings, lasted some 4 hours and involved oral evidence from the Appellant and two witnesses the determination is brief and the Judge's findings confined to one paragraph. He makes no finding whatsoever on the Appellant's claim to have been stripped naked and attacked by a mob in February 2008 (misquoted as 2007 in the determination). The Judge does find that the Appellant was dismissed on two occasions from his employment on account of his sexuality and does find that he is gay. However, although making reference to HJ (Iran) [2009] EWCA Civ 172 he does not address the central issue or ask the crucial question of why the Appellant was discreet in Uganda previously.
4. The Judge has also placed a great deal of emphasis on the Appellant's late claim for asylum without properly considering his explanation.
5. The absence of a finding on a major part of the Appellant's claim means that the Judge's finding that the Appellant was not persecuted in Uganda is unsustainable. His finding that the Appellant will be discreet upon return is also unsustainable when there has been no consideration of why that would be.
6. These errors are fundamental to the issues under appeal and the determination cannot stand. Given that the errors go to the heart of the case I set aside the determination in its entirety and direct that it be reheard.
7. Given the likely number of witnesses and the findings of fact that will have to be made this is a suitable case to be reheard in the First-tier Tribunal and accordingly I remit it to the First-tier Tribunal for a complete rehearing on all issues by any Judge save Judge Oliver.

Signed

Date 3rd September 2013

Upper Tribunal Judge Martin